TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 448.

HARVEY H. MILLER, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 9, 1906.

(20,413.)

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INDEX.

	Original.	Print.
Certificate of clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order suspending judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Caption	1	11
Petition for writ of *habeas corpus*	1	11
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Indictment for misapplication	5	14
Indictment for misapplication	11	18
Indictment for misapplication	14	20
Order postponing hearing and fixing bond	19	24
Recognizance	19	25
Order of continuance	20	25
Order dismissing application and remanding petitioner	20	25
Order of supreme court of Ohio suspending judgment	22	27
Recognizance for suspension of judgment	22	27
Mandate from supreme court of Ohio	23	28
Clerk's certificate	26	30

a

Supreme Court of Ohio.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10211, wherein Harvey H. Miller was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D. 1906.

Witness my hand and seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b

Supreme Court of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Assignment of Errors.

Now comes Harvey H. Miller, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an Act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Harvey H. Miller prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

VIRGIL P. KLINE,
AUSTIN LYNCH,
WM. A. LYNCH,
Attorneys for Harvey H. Miller, Plaintiff in Error.

d [Endorsed:] No. 10211. Supreme Court of Ohio. Harvey H. Miller, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of Errors. Filed Sep. 14, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Virgil P. Kline, Austin Lynch, and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Harvey H. Miller assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates Annotated Statutes of

Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Harvey H. Miller prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

VIRGIL P. KLINE,
AUSTIN LYNCH,
WM. A. LYNCH,
Attorneys for Harvey H. Miller, Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of error allowed; and the said Harvey H. Miller having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictment until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

g [Endorsed:] No. 10211. Supreme Court of Ohio. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Virgil P. Kline, Austin Lynch, and Wm. A. Lynch, Attorneys for plaintiff in error.

h HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Harvey H. Miller as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

HARVEY H. MILLER.

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

THE BANKERS' SURETY COMPANY,
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authorty of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven Thousand Dollars over and above its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me, September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

Duplicate bond signed.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10211. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Harvey H. Miller and R. Frank Wilson, Sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Harvey H. Miller as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day September in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10211. Supreme Court of United States. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Harvey H. Miller is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio,

o [Endorsed:] No. 10211. Supreme Court of United States. Harvey H. Miller, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition in Error.

Plaintiff in error, Harvey H. Miller, states that in the vacation after the February Term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to-wit: On May 24th, 1906, the plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a Writ

of *Habeas Corpus* and on that day applied to the Honorable Thomas T. McCarty, one of the Judges of said Circuit Court for a Writ of *Habeas Corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which Writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said Writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said Writ; that in the vacation after said February term 1906, to-wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application, writ and return, that said plaintiff in error, the petitioner herein, should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to-wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio), was not void and invalid as in violation of the provisions of Article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2, Section 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the Act of March 21, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of Section 1 of the 14th amendment of the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

6th. And for other errors apparent on the face of the record.

Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

VIRGIL P. KLINE AND
WM. A. LYNCH,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16th, 1906.

R. FRANK WILSON,
By CHARLES P. UPHAM &
JOHN W. CRAINE,
His Attorneys.

s In the Supreme Court of the State of Ohio.

10211.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Entry.

MONDAY, *June* 18, 1906.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark Co., Ohio, until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10211.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking" passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates, Annotated Statutes of Ohio; that said section of

said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said indictments were void for the reason among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments which demurrer was by said Court of Common Pleas heard and overruled;

u that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and write of the said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section 26 article two of the constitution of the State of Ohio, also section one of the fourteenth amendment to the constitution of the United States; that the judge of said Circuit Court petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section 26 article two of the constitution of the State of Ohio, or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section- (3821-85) of the Annotated

v Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one and section 26 article two of the constitution of the state of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one, section two article one and section 26 article two of the constitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the

United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—.

Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to Circuit Court of Stark County.

June 18. Petition in error, Waiver, Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment. Bond $7000.00. J. 21.
18. Copy of entry suspending judgment sent Clerk.
29. Judgment affirmed. J. 21, 170.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
" " Bond in duplicate filed.
" " Writ of Error filed.
" " Citation on Writ, and entry of appearance filed.

x Supreme Court of Ohio.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme

Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.*

1 At a term of the Circuit Court begun and held at the Court House in the City of Canton within and for the County of Stark, in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 18th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said court then and there held among other things appears the following, to-wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 716.

In the Matter of the Application of HARVEY H. MILLER for a Writ of *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 11th day of June in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's office of said Circuit Court a certain petition in this cause, which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of HARVEY H. MILLER for a Writ of *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by R. Frank Wilson, sheriff of said county, at the

county jail of said county. The pretended cause of said imprisonment is an order made by the Court of Common Pleas of said County, committing the petitioner to detention in the county jail of said county to await his trial in said court upon certain pretended indictments, numbered 2507, 2519 and 2520, which said
2 pretended indictments were presented under and solely by virtue of a certain statute, to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879, (3821-85) of the Annotated Statutes of Ohio: that said statute is in contravention of the 14th amendment of the constitution of the United States and of article 1, sections 1 and 2 and article 11, section 26 of the constitution of Ohio, is unconstitutional and void, and that said court was without jurisdiction, power or authority to issue said order and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

HARVEY H. MILLER,
By VIRGIL P. KLINE,
WM. A. LYNCH,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

Harvey H. Miller, being duly sworn says that he is the petitioner in this proceeding; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

HARVEY H. MILLER.

Sworn to by said Harvey H. Miller before me and by him signed in my presence this 11th day of June, 1906.

JACOB J. WISE, *Clerk,*
By A. W. AGLER, *Deputy.*

And afterwards on the 11th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 457.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came Harvey H. Miller and his attorneys Virgil P. Kline, and Wm. A. Lynch and submitted to the undersigned, one of the Judges of said Court his petition for a Writ of *Habeas Corpus*, which had been filed in the office of the Clerk of said Court, and said petition being heard it is now here ordered that the prayer of the petitioner for the issuance of said Writ be granted and that the Clerk of the Court shall issue the same to the sheriff of said

county commanding him to have the body of said Harvey
3 H. Miller before the undersigned at the Court House, Court Room Number 2 at one o'clock P. M., this day.

Done at Canton, June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon on this same day there was duly issued from the Clerk's office of said court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to-wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Harvey H. Miller, by you imprisoned and restrained of his liberty, as it is said you take and have before Thos. T. McCarty, a Judge of our Circuit Court, or in case of his absence or disability, before some other Judge of the same Court, at the Court House in said County, forthwith, to do and receive what said Judge shall then and there consider concerning him in his behalf; and summon the said sheriff then and there to appear before said Judge to show the cause of the taking and detention of the said Harvey H. Miller. Witness my signature and the seal of said court, at Canton, Ohio, this 11th day of June, A. D. 1906.

JACOB J. WISE,
[SEAL.] *Clerk of said Circuit Court.*

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's office of said Court the foregoing writ of *habeas corpus* issued to said sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

Received this writ on the 11th day of June, 1906, and in pursuance of the command thereof, I hereby certify that the within named Harvey H. Miller was taken into my custody on the 11th day of June, 1906, and is now detained by me, by virtue of an order of Hon. W. W. Hole, one of the Judges of the Court of Common Pleas of the First Sub-division of the 9th Judicial District of the
4 State of Ohio and in Stark County, and by reason of this surrender of the said Harvey H. Miller, by his sureties in open court on an indictment as hereinafter described of the said

Court of Common Pleas in Stark County, Ohio, on June 11, 1906, the said Harvey H. Miller having been heretofore indicted by the Grand Jury of Stark County, Ohio, for an offense under section 3821-85 of the Revised Statutes of the State of Ohio, and known as the free banking act, a copy of said indictments are hereto attached marked "Exhibit A," and made a part of this return, and I now have the body of the said Harvey H. Miller before this Court as within commanded.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

5 *Indictment for Misapplication of Funds of the Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Charles H. Van Horn, late of said County, on the 4th day of January, in the year of our Lord one thousand nine hundred and five, at the County of stark aforesaid, being then and there the Teller and clerk of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking company on or about the fourth day of January, 1905, and at the time of the willful misapplication of the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking company, and the said Charles H. Van Horn having by virtue of his said office, a partial superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 4th day of January, 1905, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as teller and clerk aforesaid, by virtue of his said office, with intent then and there on the part of him the said Charles H. Van

Horn, teller and clerk aforesaid, to convert the same to the
6 use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of the said Charles H. Van Horn, teller and clerk as aforesaid, to then and there and thereby injure and defraud to said The Canton State Bank, the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

At sight, Pay to the order of C. D. Bachtel, Cas. Three thousand dollars, Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to The Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn, teller and clerk as aforesaid; the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn, teller and clerk as aforesaid, was then and there made from and by the use of
said moneys, funds and credits of the said The Canton State
7 Bank, by the said Charles H. Van Horn teller and clerk as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by the cashing of said draft to H. H. Miller, Tr., who is the said Harvey H. Miller, of The Miller Co., the sum of Three thousand ($3000.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Charles H. Van Horn, Teller and clerk as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Three thousand ($3,000.00) dollars, became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton State Bank, and the Jurors of the Grand

Jury aforesaid, do further find and present that Harvey H. Miller late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank as aforesaid, on or about the 4th day of January, 1905, aid, abet, incite and procure the said Charles H. Van Horn, teller and clerk as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to wit: the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Charles H. Van Horn to be then and there the teller and clerk of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the Charles H. Van Horn aforesaid, late of the county
8 aforesaid, at the time and date aforesaid, and at the County aforesaid, being then and there the teller and clerk of a certain banking company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Company, on or about January 4th, 1905, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Charles H. Van Horn having by virtue of his said office as teller and clerk a partial superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his control, care and custody as teller and clerk as aforesaid, by virtue of his said office with intent then and there on the part of him the said Charles H. Van Horn, teller and clerk as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of him the said Charles H. Van Horn teller and clerk as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

Three thousand dollars. Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

9 which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon the Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Co., all of which was well known to the said Charles H. Van Horn teller and clerk as aforesaid, of The Canton State Bank, as aforesaid, at the time he cashed said draft aforesaid, nor was there any consideration of any kind or value moving from the said, The Miller Co., to The Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn teller and clerk as aforesaid, at the time he cashed said draft as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn teller and clerk as aforesaid, by virture of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Three thousand ($3000.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit and upon the order of the said, The Miller Co., in due course of business whereby the said sum of Three thousand ($3000.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of
10 Stark, in the State of Ohio, aforesaid did unlawfully, willfully knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about January 4th, 1905, aid, abet, incite and procure the said Charles H. Van Horn teller and clerk aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit: the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there well knowing the said Charles H. Van Horn to be then and there teller and clerk of the said The Canton

State Bank as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of Funds of The Canton State Bank and Count for Misapplication of Credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 15th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

11 *Indictment for Willfully Misapplying the Money, Funds, and Credits of the Canton State Bank, with Count for Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel late of said County, on the 1st day of July in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid said Corwin D. Bachtel then and there being the cashier of and a director of a certain banking Company, known as The Canton State Bank, a corporation duly incorporated and organized under the law of the State of Ohio, known as and being the free banking Company on or about July 1, 1904, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company did then and there

willfully, unlawfully and fraudulently misapply to the use of The Miller Co., certain moneys, funds and credits of said banking Company to the amount of Two Thousand ($2000.00) dollars, then in the hands of The First National Bank of Cleveland, Ohio, and owing by said The First National Bank of Cleveland, Ohio, to said The Canton State Bank, by signing his name as cashier to, and executing and delivering to The Miller Co., a certain draft or check, a copy of which is as follows:

The Canton State Bank.

No. 4782.

CANTON, OHIO, *July 1st*, 1904.

Pay to the order of Miller Co. $2000.00, Two thousand Dollars.
C. D. BACHTEL, *Cashier.*

First National Bank, Cleveland, O.

and which draft or check so signed, executed and delivered as
12 aforesaid was without any consideration therefor whatsoever, and which draft or check was paid by said The First National Bank of Cleveland, Ohio, out of said moneys funds and credits aforesaid, and charged by said The First National Bank of Cleveland, Ohio, to said The Canton State Bank, and said draft or check at said time, was signed, executed and delivered and said moneys, funds and credits willfully, misapplied as aforesaid, with the intent on the part of said Corwin D. Bachtel to injure and defraud said The Canton State Bank, the President thereof Austin C. Brant and certain directors thereof, William Wagner, William R. Zollinger and W. H. Hoover and the stockholders, depositors and creditors of said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, inquiring as aforesaid, on their said oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that Harvey H. Miller late of the county aforesaid, before and at the time the said moneys, funds and credits of said The Canton State Bank were willfully misapplied by the said Corwin D. Bachtel as aforesaid, at the time and date aforesaid, and at the County aforesaid, did feloniously, willfully, fraudulently and maliciously aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, of the said The Canton State Bank as aforesaid, the said moneys, funds and credits aforesaid, in manner and form aforesaid, to willfully misapply as aforesaid, he, the said Harvey H. Miller, then and there well knowing that he, the said Corwin D. Bachtel to be then and there the cashier of the said, The Canton State Bank as aforesaid, and that said The Canton State Bank was incorporated and organized and doing business as a banking Company as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Willfully misapplying the money funds and credits of The Canton State Bank. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

13

Witness my hand and the seal of said court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

14 *Indictment for Misapplication of Funds of The Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on the 13th day of August in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier and a director of a certain Banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking company on or about the 13th day of August, 1904, and at the time of the willful misapplication of the moneys, funds and credits of said Bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office, the general superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 13th day of August, 1904, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as cashier aforesaid, by

virtue of his said office, with intent then and there on the part of him the said Corwin D. Bachtel cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty three
15 hundred and fifty ($2350.00) dollars, and with the further intent on the part of the said Corwin D. Bachtel, cashier as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft when so cashed was in the words and figures following, to wit:—

$2350. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty three hundred and fifty dollars with exchange. Value received and charge to account of

THE MILLER CO.,
By H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co. was not indebted in the sum of Twenty-three hundred and fifty ($2350.00) dollars, nor in any other sum approximating Twenty-three hundred and fifty dollars ($2350.00) to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to the Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel, cashier as aforesaid, was then and there made from and by the use of said moneys, funds and credits of the said The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by the cashing of
16 said draft to H. H. Miller, Tr., who is the said Harvey H. Miller, of *of* the said The Miller Co., the sum of Twenty-three hundred and fifty ($2350.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Corwin D. Bachtel, cashier as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty dollars ($2350.00) became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton

State Bank, and the Jurors of the Grand Jury aforesaid, do further find and present that Harvey H. Miller late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank, as aforesaid, on or about the 13th day of August, 1904, aid, abet, incite and procure the said Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to-wit: the sum of Twenty three hundred and fifty ($2350.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Corwin D. Bachtel to be then and there the cashier of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the said Corwin D. Bachtel aforesaid, late of the county aforesaid at the time and date aforesaid, and at the County aforesaid, being then and there the cashier of a certain banking Company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Com-
17 pany, on or about August 13th, 1904, and at the time of willfully misapplying the moneys funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office as cashier, the general superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his control, care and custody as cashier as aforesaid, by virtue of his said office with intent then and there on the part of him the said Corwin D. Bachtel, cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty-three hundred and fifty ($2350.00) dollars, and with the further intent on the part of him the said Corwin D. Bachtel cashier as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$2350.00. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty-three hundred and fifty dollars, with exchange. Value received and charge to account of

THE MILLER CO.,
Per H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co.

which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and ficticious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Twenty-three hundred and fifty ($2350.00) dollars, nor in any other sum approximating Twenty-three hundred and fifty ($2350.00)
18 dollars, to the said The Miller Co., all of which was well known to the said Corwin D. Bachtel, as aforesaid, of The Canton State Bank, as aforesaid, at the cashed said draft aforesaid, nor was there any consideration kind or value moving from the said, The Miller Co., to the Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, at the time he cashed said draft as aforesaid, The said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel as aforesaid, was then and there made from and by the use of the moneys, funds and credits of the said, The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Twenty-three hundred and fifty ($2350.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit upon the order of the said, The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty ($2350.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of Stark, in the State of Ohio aforesaid, did unlawfully willfully, knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about August 13th, 1904, aid, abet, incite and procure the said, Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit:—the sum of Twenty-

three hundred and fifty dollars, ($2350.00) as aforesaid, he,
19 the said Harvey H. Miller, then and there well knowing the said Corwin D. Bachtel to be then and there cashier of the said, The Canton State Bank, as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of funds and credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Journal B, Page 457.

And thereupon at this same term and date, to wit:—

Be it remembered that on this day, at the Court House, Court Room Number 2, at the city of Canton, in said county, R. Frank Wilson, the sheriff of said county having now appeared with the body of said Harvey H. Miller before the undersigned judge of said court in pursuance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Harvey H. Miller before the judges of our said Circuit Court, or any one of them, at the same place on Saturday the 16th day of June, 1906 at 9 o'clock A. M. unless the said Harvey H. Miller shall enter into a recognizance to the State of Ohio, in due form to appear before said judges or any one of them at that time and place, and abide any order that may be made by them in the premises, in the sum of Seven Thousand Dollars, with sureties to my acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, Ohio, this June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court,
Stark County, Ohio.

And thereupon at this same term and date to wit:—

Journal B, Page 458.

This day came Harvey H. Miller and with F. W. Miller and M. W. Miller as his sureties entered into a recognizance before the Court in the sum of Seven Thousand Dollars ($7000.00) which recognizance reads and is in the words and figures following to wit.

"Be it remembered that on the 11th day of June A. D. 1906, personally appeared before Thomas T. McCarty, one of the Judges of said court and acknowledged themselves to owe to the State of Ohio the penal sum of $7000.00 to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:—The condition of the above obligation is such that if the said Harvey H. Miller shall appear before the Judges of said Circuit Court or any one of them on Saturday, June 16th 1906 at 9 o'clock A. M. at the Court House in Court Room No. 2 in said County and abide the further order and judgment of said Judges or any one of them and not depart without leave, then this obligation to be void, otherwise to be in full force and effect.

HARVEY H. MILLER.
F. W. MILLER.
M. W. MILLER.

Approved June 11th 1906.
JACOB J. WISE, *Clerk.*

And afterwards on the 16th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 464.

This cause came on for hearing before Hon. Thos. T. McCarty, one of the said Judges of said Circuit Court upon the motion of the defendant, Harvey H. Miller, for a continuance upon consideration whereof the court continues this cause until Monday, June 18th, 1906 at 8:30 o'clock A. M. at the Court House, in Canton, Ohio. The bond given in this cause to remain in full force and effect.

And afterwards on the 18th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 465.

This cause came on to be heard at Chambers after the February Term 1906, to-wit:—On June 18th, 1906 before Honorable T. T. McCarty, one of the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant

Harvey H. Miller for a Writ of *Habeas Corpus* and upon the return and exhibits attached thereto of R. Frank Wilson as sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of counsel, said Judge finds that the said applicant Harvey H. Miller was at the time of the filing
21 of said applications in the custody of R. Frank Wilson as sheriff of Stark County, Ohio, by virtue of an order of Court of Common Pleas of said County for his detention and imprisonment in the jail of said County to await his trial upon indictments found and returned by the Grand Jury of said Stark County against the said Harvey H. Miller charging him with having committed certain offenses set forth in said indictments contrary to Section 30 of an act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st, 1851, as the same was amended on April 24th, 1879, and now known as Section (3821-85) of the annotated statutes of Ohio. And the said Judge finds that said section 30 of said Act is not in contravention of Article 1 of Sections 1 and 2, and of Article 2. Section 26 of the Constitution of Ohio and that it is not in contravention of the 14th Amendment of the Constitution of the United States as alleged by the said Harvey H. Miller in his said application and the Court further finds that said Harvey H. Miller is not and was not at the time of the filing of said application unlawfully detained by the respondent R. Frank Wilson as sheriff of said Stark County and that the application of said Harvey H. Miller for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by said Judge that the application of the said Harvey H. Miller for said Writ of *Habeas Corpus* be dismissed and that said Harvey H. Miller be remanded to the custody of said R. Frank Wilson respondent as sheriff of Stark County, Ohio, and by virtue of said orders of the Court of Common Pleas to be by him held for trial under the indictments set up and referred to in these proceedings. It is further considered that the said Harvey H. Miller pay the costs of these proceedings taxed at $— and for which execution is awarded against him and to all of the findings, orders and judgment aforesaid, said Harvey H. Miller now here excepts.

T. T. McCARTY.

Done at Canton, this 18th day of June A. D. 1906.

And afterwards on the 18th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following to-wit:—

22 *Mandate from Supreme Court Filed.*

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio of the Term of January, A. D. 1906, to-wit, Monday, June 18th.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

On motion of plaintiff in error and for good cause shown, it is hereby ordered by the Court that the execution of the judgment herein be suspended, upon plaintiff in error giving an undertaking in the sum of $7,000.00, subject to the approval of the Clerk of Courts of Stark County, Ohio, until the final determination of this action in this Court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing Entry is truly taken and correctly copied from the Records of said Court, to wit: from Journal No. 21, page 130.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 18th day of June, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

And thereupon on this same day there was duly filed in the Clerk's office of said Court a certain bond in this cause which bond reads and is in the words and figures following to-wit:

Recognizance for Suspension of Execution of Sentence.

In Supreme Court of Ohio.

THE STATE OF OHIO
vs.
HARVEY H. MILLER.

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, That on the 18th day of June A. D. 1906, Harvey H. Miller, and F. W. Miller and M. W. Miller his sureties personally appeared before Jacob J. Wise, Clerk of Courts in and for the County aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following, to-wit:— The condition of this Recognizance is such, that if the above bound

Harvey H. Miller shall personally be and appear before the Supreme Court of Ohio until the above case in error of said Harvey H. Miller is determined and abide the judgment or sentence of the Court, and not depart without leave, then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

HARVEY H. MILLER.
F. W. MILLER.
M. W. MILLER.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk.*

23 *Mandate from Supreme Court Filed.*

And afterwards on the 2nd day of July A. D. 1906 there was duly filed in the Clerk's office of said court a certain mandate from Supreme Court in this cause, which mandate reads and is in the words and figures following to-wit:—

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

The cause came on to be heard upon the petition in error and was argued by counsel, of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit:—section thirty of an act of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said Court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the Constitu-

tion of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County, for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said
24 imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one, article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment of the Constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section (3821-85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration, whereof, it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment to the Constitution of the United Sates or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this Court that the
25 judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court, be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered

that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered, That a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the seal of said court, this twenty fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of our Supreme Court of Ohio, in the case of Harvey H. Miller *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness Lawson E. Emerson, Clerk of our Said Supreme Court of Ohio, at Columbus, this 24th day of July 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

26 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 21 is a true copy of the Record in cause No. 716, and from page 22 to page 25 is a certified copy of the Mandates from the Supreme Court and the Supercedeas Bond filed in cause No. 718. In the matter of the Application of Harvey H. Miller for a Writ of *Habeas Corpus* as the same appears upon the Records of said Court, and I further certify that I have carefully compared said foregoing copy with the original Record, and the same is a full and correct transcript thereof.

Witness my hand and the seal of said court, at Canton, Ohio, this 15 day of September, A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk*.

Endorsed on cover: File No. 20,413. Ohio supreme court. Term No. 448. Harvey H. Miller, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,413.